IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WP(C).No. 32627 of 2006(H)

PETITIONERS:

1. **PRASAD EAPEN, TALUK SUPPLY OFFICER, CHENGANNUR.**
2. **T.I.RAVI, ASSISTANT TALUK SUPPLY OFFICER, KOTTAYAM.**

BY ADV. SRI.T.S.RADHAKRISHNA PILLAI
SRI.T.R.RAJEEV

RESPONDENTS:

1. **THE STATE OF KERALA, REP.BY THE SECRETARY TO THE GOVERNMENT FOOD CIVIL SUPPLIES & CONSUMER AFFAIRS DEPARTMENT, THIRUVANANTHAPURAM.**
2. **THE DIRECTOR OF CIVIL SUPPLIES, DIRECTORATE OF CIVIL SUPPLIES, THIRUVANANTHAPURAM.**
3. **THE DISTRICT SUPPLY OFFICER, ALAPPUZHA.**
4. **THE DISTRICT SUPPLY OFFICER, KOTTAYAM.**
5. **THE MANAGING DIRECTOR, KERALA,CIVIL SUPPLIES CORPORATION, MAVELI BHAVAN, GANDHI NAGAR, ERNAKULAM.**

BY ADV. SRI.R.LAKSHMI NARAYAN for R5
BY GOVERNMENT PLEADER SRI.P.NANDAKUMAR for R1 to R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/01/2007 ALONG WITH WPC NO. 31056 OF 2006, THE COURT ON 13/03/2007 DELIVERED THE FOLLOWING:

WPC.NO.32627/2006 H

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1; COPY OF LRDER DTD. 7/04/05 OF 1ST RESPONDENT.

EXT.P2: COPY OF ORDER DTD. 1/12/06 (EXTRACT) OF 1ST RESPONDENT.

EXT.P3: COPY OF RELEVANT PORTION OF SENIORITY LIST OF TALUK SUPPLY OFFICERS, ISSUED BY 1ST RESPONDENT.

EXT.P4: COPY OF GOVT. ORDER G.O.(P) 1/04/P&ARD DTD. 1/01/2004 WITH ANNEXURE IV.

EXT.P5: COPY OF LETTER DTD. 18/11/2006 OF INSTITUTE OF MANAGEMENT IN GOVERNMENT.

RESPONDENT'S EXHIBITS:

EXT.R1: COPY OF THE GOVERNMENT ORDER G.O.(MS) NO.57/2000/F&CSD DTD. 30/12/000.

EXT.R2: COPY OF THE G.O.(MS) NO.9/2003/FCSW &CAD DTD. 4/04/03.

1ST RESPONDENT'S EXHIBITS:

EXT.R1(C): COPY OF THE G.O. DTD. 14/10/2004.

EXT.R1(D): COPY OF THE FINAL SENIORITY LIST PUBLISHED ON 2/11/2006.

/TRUE COPY/

KSS

K.K.DENESAN, J.

==========
WP(C).NOs.31056 & 32627 of 2006.
==========

Dated this the 13th day of March, 2007.

J U D G M E N T

WP(C).No.32627/2006.

The petitioner belongs to the cadre of Taluk Supply Officer in the Civil Supplies Department. As per Government order dated 1-12-2006 (Ext.P2) sanction has been accorded for the deputation of seven Taluk Supply Officers and one Asst. Taluk Supply Officer to the Kerala State Civil Supplies Corporation Ltd., subject to the terms and conditions stipulated in G.O.(Ms)No.57/2000/F&CSD dated 30-12-2000. Feeling aggrieved by the order of deputation and challenging Ext.P2 to the extent it concerns the petitioners, this writ petition has been filed.

2. It is contended that the petitioners are exempted from deputation as per Ext.P1 Government order dated 7-4-2005 and Ext.P2 has been issued in violation of Ext.P1. According to the petitioners,

they are experienced training co-ordinators and are scheduled to work as such upto March, 2007. The deputation now ordered will cause dislocation. They also contended that going by their seniority, they are not liable to be deputed.

3. In the counter-affidavit filed on behalf of the 1st respondent it is stated that out of 3000 posts in Kerala State Civil Supplies Corporation, about 1300 posts are being manned by the personnel belonging to the Civil Supplies Department and therefore, 1300 out of 3000 personnel in the Civil Supplies Department will always have to be on deputation to the Kerala State Civil Supplies Corporation. This can be possible only if every member of the Civil Supplies Department belonging to the respective categories spends a minimum period of 13 years on deputation during his entire service. The petitioners have no case that they have served the Corporation for the minimum period. In order to carry out the process of deputation in a just and equitable manner the 1st respondent issued G.O. dated 30-12-2000. A true copy of this G.O. has been

produced along with memo dated 1-1-2007 before this Court. The norms have been prescribed after consultation with the service organisations also. A seniority list of personnel due for deputation has been prepared strictly following the norms as subsequently amended as per G.O.(Ms)No.9/2003/F&CSD dated 4-4-2003. The 1st respondent says that the seniority list was drawn up only after previous publication enabling all concerned to file objections. Ext.P3 list produced by the petitioners is the provisional seniority list. As no complaints were received within the stipulated time for filing objections, the provisional list was finalised and published on 2-11-2006. It is, therefore, contended that the petitioners cannot claim exemption from deputation placing reliance on Ext.P1 in as much as their case will have to be considered along with others following the terms and conditions laid down in the above mentioned two Government orders. Going by those norms, the petitioners' turn has reached.

4. Heard learned counsel for the petitioners and

learned Government Pleader for the respondents.

5. The petitioners have no case that they are not liable to be deputed to the Civil Supplies Corporation so as to complete the total period of 13 years prescribed in the revised norms issued as per G.O. dated 30-12-2000. Going by their seniority and the period of service they had spent in the Civil Supplies Corporation, their turn for deputation has reached. Hence the only contention which need be considered on merits is the claim of the petitioners for exemption for the period specified in Ext.P1. It is evident that Ext.P1 was issued based on a report sent by the 2nd respondent Director of Civil Supplies to the Government requesting to exempt ten persons including the petitioners (Sl.Nos.1 and 5 in Ext.P1) from deputation on the ground that those officers are experienced trained Co-ordinators and their service is inevitable for the training programme of the Department. Ext.P1 says that the exemption from deputation will be valid only for a period of two years. It is, therefore, pointed out that the petitioners shall not be deputed

to the Corporation till 7-4-2007.

6. The 1st respondent has filed an additional counter-affidavit in answer to the averments made in the reply-affidavit of the petitioners. Exts.R1(c) and R1(d) also have been produced along with the additional counter-affidavit. The additional counter-affidavit says that the State Training Policy was formulataed in 2004, that as per Ext.R1(c) G.O. dated 14-10-2004 orders were issued with regard to the tenure of Trained Managers, Co-ordinators, etc., and that the training is conducted by the Institute of Management in Government and that the Director of Institute of Management in Government sent a proposal requesting that Trained Managers and Co-ordinators may be given a tenure of three years as a general rule. But the Government decided to fix the exemption period as two years. It was under the above circumstances Ext.P1 was issued. However, subsequent events have taken away the relevance and need for granting exemption to the trained Co-ordinators. It has been sworn to by the 1st respondent that since July, 2006 no training programme

has been conducted by the Institute of Management in Government for want of participants and that the petitioners are not required to function as training co-ordinators thereafter.

7. Hence the Government have taken the decision that for want of participants in the training programme and still further in the absence of the training programme itself since July, 2006, the exemption granted to the petitioners and others from deputation need not be continued. On a review of the entire situation, the Government decided to treat all the officers including those who were exempted from deputation for the purpose of training uniformly and to pass orders of deputation strictly in terms of G.O. dated 30-12-2000 as amended by G.O. dated 4-4-2003. It was thereafter the provisional list containing the names of officers due for deputation was circulated calling for objections from aggrieved persons. Since no objection was received within the time permitted, the final list was published on 2-11-2006 [Ext.R1(d)].

8. I find merit in the above contention of the

respondents. The 1st respondent is perfectly right in laying down the norms governing the deputation of the officers of the Civil Supplies Department to the Civil Supplies Corporation for uniform application and passing consequential orders adhering to those norms. The officers shall be treated alike and without discrimination. The grant of exemption to a few from the general principles laid down in the Government orders will create disharmony among the members of the service and heart burn to the vast majority of the officers. Hence exemption can be granted only if genuine and justifiable grounds exist. The fact that Ext.P1 was issued at some point of time taking into consideration the report sent by the 2nd respondent Director cannot be a shield against deputation. Such exemptions cannot be continued to hold the field even after the relevance and necessity for such exemptions have ceased to exist. Hence the petitioners are liable to be sent on deputation to complete the balance period. The decision of the 1st respondent to direct the petitioners to go on deputation when their turn,

going by the terms and conditions in the above mentioned Government orders, has reached, will only promote contentment in service and will avoid the criticism that the Government have shown undue favouritsm to a few.

9. Hence I am not inclined to interfere with the impugned orders.

WP(C).No.31056/2006.

The petitioner belongs to the cadre of Taluk Supply Officer in the Civil Supplies Department. The 1st respondent as per Ext.P3 proceedings dated 7-10-2006 published the seniority list of the Officers of the Civil Supplies Department due to be sent on deputation to the Civil Supplies Corporation. The petitioner's name finds a place in Ext.P3(a) list against Sl.No.2. In the remarks column, the following entry is seen made, "G.O.(Rt.)122/05 dated 07-04-05 MGP Due after 06.04.07." In the Government order dated 1-12-2006 by which sanction was accorded for the deputation of seven Taluk Supply Officers, the petitioner's name is shown against Sl.No.5. The deputation is subject to the

terms and conditions stipulated in G.O.(Ms.) No.57/2000/F&CSD dated 30-12-2000. The petitioner was sent on deputation to the Civil Supplies Corporation previously on two occasions and the total period of his deputation comes to nine years and nine months. During one such spell, while the petitioner was holding the post of Senior Assistant in the Civil Supplies Corporation, disciplinary action was taken against him for alleged irregularities detected by the audit party. The disciplinary action was finalised by the Director of Civil Supplies vide proceedings dated 25-5-1999 and a penalty of barring two increments with cumulative effect was imposed on the petitioner. Against that order he preferred appeal, which was dismissed by the appellate authority. However, in the revision filed by him before the Government, the matter was remanded to the Director of Civil Supplies for fresh disposal. The Director of Civil Supplies again considered the case and decided to sustain his early decision as per proceedings dated 6-5-2005. The petitioner says that he has preferred Ext.P4 appeal against the order of the

Director of Civil Supplies. But the pendency of the appeal is denied in the Counter-affidavit.

2. The grievance of the petitioner is against his deputation for the 4th time. The contentions raised on behalf of the petitioner are:

(i) The disciplinary proceedings against him are at the instance of the Officers of the Civil Supplies Corporation who are not in cordial terms with the petitioner, and therefore, he apprehends that he is likely to be harassed;

(ii) Since he had completed nine years and nine months on deputation in three spells, it is unjust to send him on deputation for the fourth time;

(iii) He has crossed the age of 50 years and to be spared from further deputation;

(iv) Order directing him to undergo deputation is unsustainable when those who have completed the period of deputation for a lesser period than the deputation of the petitioner are excluded from the list of deputationists.

3. The contentions raised on behalf of the 1st

respondent are more or less similar to those raised in WP(C).No.32627 of 2006. Government order dated 30-12-2000 by which norms for deputation have been issued by the Government and Government order dated 4-4-2003 by which certain norms stand amended, have been produced by the Government Pleader as per memo filed on 3-1-2007. These two orders have been produced in WP(C). No.32627/2006 also. The petitioner has filed a reply-affidavit. In the reply-affidavit he has stated inter-alia that he was deputed to the Civil Supplies Corporation for a period of five years as per Government order dated 11-8-1983 and the petitioner has completed that period of five years. Subsequently as per G.O.(Rt.)No.246/94/F&CSD dated 12-4-1994 he was again sent for deputation. But during the second spell he could not work for the full period of five years. He was recalled after completing four year and two months' deputation. As per Government order dated 28-11-2000 he was deputed for the third time, but he was not given posting. It was contended by the counsel for the petitioner that the petitioner would have very well

completed the full term of five years in the second spell but for reasons not attributable to him, he was recalled. According to the petitioner, in the above background, it is unfair to direct him to undergo deputation for the fourth time.

4. Heard both sides.

5. G.O.(Ms)No.57/2000/F&CSD dated 30-12-2000 makes it clear that the total period of deputation in the normal course is 13 years. The Officers of the Civil Supplies Department can successfully challenge the validity of the deputation order only when the maximum period of deputation exceeds 13 years. Since the above period has been fixed for uniform application, the petitioner cannot claim exemption. I have already found in the case of the petitioners in WP (C).No.32627/2006 that the need for granting exemption from deputation on the ground of training programme does not exist now and therefore, the decision taken by the Department to apply the provisions of Government order dated 30-12-2000 as amended by Government order dated 4-4-2003 does not call for interference by this

Court. The fact that the petitioner was recalled during the currency of the second spell of deputation cannot be taken advantage of by the petitioner. What is relevant is the completion of a total period of 13 years and not the number of spells or occasions, a particular Officer had been on deputation. In cases where the Government or the Department formulates a scheme for effective management and implementation of the various activities of the Department as also the services and as long as there is no challenge against such scheme on the ground of arbitrariness or discrimination, any decision taken by the Government to apply that scheme uniformly to all the Officers shall not be set at naught by this Court at the instance of those who are reluctant to co-operate with that scheme.

6. The contention of the petitioner that disciplinary action was taken against him while he was working on deputation some time in 1999 is no valid ground to claim exemption from deputation when all other Officers are bound to complete the full term. In fact, the disciplinary proceedings were initiated and

completed by the Officers of the Civil Supplies Department. If the contentions of this nature are upheld, it will result in a situation where any Officer can avoid orders posting him in another Department or Corporation, on deputation by inviting disciplinary action.

7. Reliefs prayed for by the petitioner on the above score cannot be granted.

8. Orders of deputation are issued invoking Rule 140(a) of Part I Kerala Service Rules. A learned Judge of this Court in the decision rendered in WP(C). No.18201/2004 while rejecting the contentions raised against the deputation of the petitioner therein held that, the whole time of an Officer appointed in Government Department, is at the disposal of the Government, and he may be employed in any manner required by an administrative authority, exercising power. The learned Judge observed in that context that it would be rather difficult to accept the excuses put forward by the Officers sent on deputation that it would cause inconvenience or hardship to them. I

perfectly agree with the above observations of the learned Judge.

In the result, the above writ petitions are liable to be dismissed, I do so.

K.K.DENESAN, JUDGE.

kvs/-